



Chapter One

Advertising & Marketing

How do you make the property you are trying to sell stand out and grab the attention of home buyers? Successful marketing always looks to the consumer's wants and needs. But beware – don't overstep the bounds of fair housing by marketing in a way that limits buyer's choices based on their protected class. Read on to find out how to market successfully without becoming vulnerable to a fair housing violation.

1. How can I safely market my property under fair housing laws?

To market your property safely, describe the features of the property and avoid describing whom you think would like to buy the property.

A condominium ad can highlight an additional room with state-of-the-art internet access and other high-tech features. The ad should avoid statements such as "perfect for mature professionals." Then the ad will appeal to everyone interested in those features, rather than discouraging families with children from viewing the property.

Fair housing laws prohibit making, printing or publishing any statement or advertisement that indicates a preference, limitation, or discrimination based on a "protected class" (race, national origin, sex, religion, disability, etc.). For a list of protected classes in your area, see Appendix G. For a primer on fair housing laws, see Appendix A.

Fair housing laws apply to all types of advertising or marketing used in home sales and purchases, including ads in newspapers, on the radio, in magazines, on the internet, on television, on flyers, even in comments for a listing in the Multiple Listing Service.

2. What can I say about my property? What should I avoid saying? Isn't there a list somewhere?

You should avoid making any statement that indicates a preference or discouragement based on someone's protected class. For example, if you tell a family attending an open house that they might prefer a home on a safer street away from a busy intersection, they may construe your comment as steering them away from this house. That would limit their choices as a family with children – and leave you open to a complaint of illegal discrimination.

There are no federal regulations regarding advertising, although the U.S. Department of Housing and Urban Development (HUD) has provided guidelines (see www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf).

You may not intend to indicate a preference or limitation when you market your property, but a customer's reasonable perception is considered in evaluating whether there is a fair housing violation. If you have a question about whether an ad potentially violates fair housing laws, feel free to run it by your local fair housing agency.

3. Am I required to use the equal housing logo in all my ads? Where do I need to post fair housing posters in the common areas?

HUD requires display of a fair housing poster with the Equal Housing Opportunity logo at real estate offices (see 24 CFR 100). The logo graphic (sample at right) is available in various sizes online at the HUD web site at www.hud.gov/library/bookshelf15/hudgraphics/fheologo.cfm. Free color posters with this logo are available from the fair housing agencies for each jurisdiction (also available on their web sites).



The Seattle Municipal Code requires real estate professionals and residential property managers within the city limits to prominently display a letter-sized fair housing poster in their place of business. Failure to display the poster can result in fines.

Including the Equal Housing Opportunity logo in your advertisements and displaying in your offices is a great way to show that you support fair housing.

4. What should I consider before running ads with human models?

Avoid using pictures or images that show preference or discourage people because of their protected class. If you use advertising with photographs or drawings of people, try to include men, women, children, people with disabilities, and people of various races, nationalities and ages in a way that reflects the population as a whole. A series of newspaper ads run over a period of weeks using only white models could be found to be a violation of fair housing laws.

5. Can I ever affirmatively market to a specific protected class?

Yes. Fair housing laws allow you to affirmatively market your property to the following protected classes:

- You may advertise that the home is accessible for people with disabilities.
- You may state that families are welcome, as well as highlight amenities such as playgrounds.
- You may advertise that a property is for seniors, if the property meets Housing for Older Persons Act (HOPA) requirements.

6. What advertising strategies or resources can I use to affirmatively market in general?

Consider implementing an affirmative fair housing marketing plan. Contact HUD or your local real estate association to get more information. A commitment to fair housing which includes a broad marketing strategy brings in more business across the board. Consider advertising in newspapers, newsletters or on radio stations that cater to different ethnic communities, families, and people with disabilities.

7. I am a member of a Christian real estate organization. Is it legal under fair housing laws to use Christian names and symbols in our advertising? Can we treat Christian customers differently?

You cannot treat Christian customers differently than non-Christian customers. If your company name implies a preference for Christians or if you use symbols such as a fish or a cross, you should use the fair housing logo and include a clear disclaimer that your company does not discriminate based on race, color, religion, creed, etc. You have the right to identify your own business with the graphics and language of your choice – as long as your **actions** do not discriminate or create a discriminatory climate based on someone's protected class status.

When developing your advertisements and services, consider: Would a non-Christian feel welcomed by your business? Would a non-Christian receive the same level of service from you as a Christian would? You should be able to answer yes to both questions. However, there may be rare situations in which a property owned and operated by a non-profit religious organization can require that people who participate in its housing programs adhere to a religious code.

Fair housing issues arise when clients believe they have been denied equal service or access because of their religion (or any other protected class). Marketing strategies and signage that make non-Christians feel unwelcome could result a fair housing complaint.

In addition, the fair housing laws permit ads that contain descriptions of properties (condominium complex with chapel) or services (kosher meals available) that do not on their face state a preference for specific buyers. The use of secularized terms or symbols relating to religious holidays, such as Santa Claus, Easter Bunny or St. Valentine's Day images, or phrases such as Merry Christmas or Happy Easter are permitted under fair housing laws.



Chapter Two

Working with Buyers

Marketing your services to new prospects and meeting the needs of your clients are your priorities. Whether you work for a large office or operate out of your home, it is important to:

- Have written procedures and resources in place.
- Follow your procedures and use your resources consistently.

Not only will this help you provide professional services to your clients – it should also help ensure compliance with fair housing laws.

8. What questions can I ask prospects about the types of houses they want?

You can always ask questions to help you learn objective, non-discriminatory information:

- What price range can your clients afford?
- What features are they looking for in a residence?
- Where do they want to live?

Be prepared ahead of time with resources that will allow your clients to answer their own inevitable questions about who lives in the area, what the schools are like, whether sex offenders live nearby, what transportation is available, what the crime rate is, and so on. See Appendix B for some area resources.

The sooner you establish what you can do for your clients and what resources are available to them, the sooner you can do what you do best – show them properties that meet their criteria, and provide them with information to help them make a competitive offer.

9. Many of my clients ask me questions about the neighborhood, such as: “Who lives here? Are there any [fill in ethnic/racial group]?” How should I respond to questions like these?

Let your clients know that you cannot provide information on racial, ethnic or other protected class demographics under the fair housing laws, which prohibit discrimination based on such factors. Consider giving all of your clients a written statement about your

commitment to fair housing when you first start working with them. This statement also can let clients know what services you can provide them and what information they'll need to find out on their own. When you discuss your commitment to fair housing early on, your clients may be less likely to express their possible biases.

Many agents give a resource packet to all clients at the first meeting. The packet provides a broad range of information, including online resources to locate up-to-date neighborhood census information, community resources, local media, etc. By providing general information to all of your clients, you make it easier for them to find the perfect home. See Appendix B for some area resources for home buyers to include in your own packet.

For your own protection, make sure you document any specific requests from your prospects and clients that you feel may have fair housing implications. Keep a record in your files of both the request and your response.

10. Can I give my client demographic information that's readily available on the Internet?

Answering any information regarding demographics can raise potential fair housing issues later on. To be on the safe side, give your clients resources so they can access demographic information on their own. A lot of information is available by phone or on the Internet. If your client doesn't have access to the Internet at home, let them know they can access it at their local library. See Appendix B for online resources.

11. A client is purchasing property as an investment, and wants to know how the price is trending in that area. How should I answer him?

Answer your client's question. Tell the buyer how prices are trending in that area. You have access to information that shows what comparable homes are going for, and that information doesn't involve any fair housing issues.

12. Can I tell people how to find out if sex offenders live in their neighborhood?

Sure. Giving people information on how to find out if sex offenders live in the neighborhood where they are interested in purchasing a home does not violate fair housing laws. See Appendix B.

13. What information can I give my client during the 3-day neighborhood review that will not violate fair housing laws?

During a 3-day neighborhood review (a period where a buyer can back out of an offer if there is something they do not like about the neighborhood), your client wants to make sure this huge investment is the right one. If you want to provide a professional service that stands out from the rest, prepare a resource packet that provides a list of online resources or telephone numbers for law enforcement agencies, schools, transportation services, census data, etc., for your local area. Your clients can do whatever homework

they choose, and you don't have to worry about any potential fair housing implications. See Appendix B.

14. In Eastern Washington, sometimes clients ask me where the Mexican areas of town are. Can I give them this information?

You can indicate where Latino businesses are concentrated in the shopping core, but stay away from characterizing residential districts by ethnicity. Provide them with resources described in Appendix C along with contact information for local neighborhood associations. Then let them do their own homework. When your clients have located a neighborhood they like, step in and do what you do best – match them with homes that meet their needs.

15. My client has asked me things like: “There aren’t a lot of Asian people here, are there?” How should I respond to him?

Do you have resources at your fingertips? Let your client know that he can learn that information on his own. Explain that you abide by fair housing laws and you cannot answer questions like that. See Appendix C.

This is another good example of why you may want to give a written notice about fair housing to all your clients when you first meet them, so they are less likely to express their possible biases. Remember to document statements like this as well as your responses. This can help protect you later on from potential fair housing complaints.

16. My client asks lots of questions like: “Are housing prices going up? How fast do houses sell here? Do the people here keep up their places?” They’re legitimate questions, but I get the feeling he’s fishing for ethnic information, which makes me uncomfortable. When does a question become coded language for discrimination?

Feel free to answer questions like these with information on prices and comparables. Let them know they can find additional information about neighborhoods on their own from resources that you can provide them.

17. My client asked me, “Why is this house selling for \$300,000, and a few blocks over a similar house is selling for \$200,000?” I think it may have to do with the ethnicity of the people on either side of an old redline, but I don’t want to say that to her. How should I respond?

Let her know that listing prices for houses are determined by many variables, including interior amenities she may not be able to see from the street, a seller’s need to move quickly, etc. Offer to show her both homes and let her decide what she wants to do.

You should not characterize a price difference between two houses as ethnically based, because that type of talk perpetuates old redlines. In addition, comments about

neighborhood demographics can open you up to potential steering complaints later on if your client feels you were encouraging her to choose one home over the other based on her protected class.

18. A Chinese family from the New York area asked me where Chinatown is. How should I answer?

Responding to someone who asks you where Chinatown is located (also known as the International District in Seattle) does not violate fair housing laws.

Consider a slightly different situation: say you receive an out-of-town call from a Chinese prospect and you only show them available units in Chinatown or areas you believe have a higher number of Chinese residents. That would be “steering” based on your client’s protected class and would be a violation of fair housing laws.

19. Some new clients told me, “Just show us houses in the white neighborhoods.” What should I do?

Tell the clients that you support fair housing laws and that you do not consider race as a factor in showing them around. Explain that your expertise is in finding houses in their price range with the features they describe, in areas that they can choose. Give them the same resources that you give all your clients. Document their request and your response and keep it on file.

20. A gay prospect, new to the area, asked me where the gay areas of town are. What should I say? How can I provide useful information under the fair housing laws?

Again, state your support for fair housing and explain that you can’t point out residential neighborhoods by protected class. Your safest approach is to provide resources in your area to help your client figure out where he wants to live. Let him know that he can contact a local gay newspaper or other gay organization. That’s not a violation of fair housing laws – it’s good customer service. Bottom line? Maintaining a broad base of clients is key and getting their referrals is gold. Having a broad range of resources available ahead of time puts you that much further ahead of the competition.

21. A relocating home buyer in town for the weekend wants to know which is the most ethnically diverse neighborhood in the area, and he doesn’t have time to do his own research. How can I guide him to appropriate neighborhoods without putting myself in legal jeopardy?

Do you know the most ethnically diverse neighborhood in the area? Do you know what that phrase means to him? You cannot make choices like this for your clients without potentially doing them a disservice and possibly running afoul of fair housing laws. Customers’ home searches depend a lot on how much they can afford and what features

they are looking for in a home. Stick with those elements as much as possible. Give them a range of choices that meet their criteria in a wide variety of neighborhoods and let them decide. If they have any time over the weekend, let them use your Internet or direct them to the local library to look up information themselves.

Your Client Resource Packet should let prospects know you support fair housing, and should describe both the services you are able to provide and those they should handle themselves.

22. An African American couple wants to make an offer on a FSBO I just showed them. When I contacted the seller, she asked what race my clients were. How should I respond? What if the seller simply refuses to deal with my clients?

Tell the seller that you cannot give her that information under the fair housing laws and that the question is illegal. In a fair housing lawsuit with these facts, the court found that the real estate agent had “facilitated and participated” in discrimination simply by answering a seller’s question about race, even though she immediately informed the seller that her question was discriminatory. In that case, the court imposed a civil penalty on the real estate agent to send a message that questions about race and color should remain unanswered.

If the seller refuses to deal with your clients because of their race, let your clients know that they can file a complaint of illegal discrimination under fair housing laws. You can provide important evidence in their case. You also may be able to file a complaint in this situation because you have been harmed in a real estate transaction – you lost the opportunity to receive a commission! For more information, call your local fair housing agency to see what your rights are.

23. This FSBO house is my clients’ dream home and I’m worried the owner might sell it to someone else because of their race. Can a fair housing agency do anything – fast?

Yes, contact your local fair housing agency immediately. We may be able to stop the seller from contracting with someone else until your clients’ case can be evaluated! Fair housing enforcement agencies have the authority to go to court to stop a seller from selling a home where the buyer will suffer irreparable harm, and is likely to prevail on the merits.

In a home sale case, irreparable harm is often assumed because if the home is sold to someone else, that buyer can probably not be forced out later to let your clients buy it. Your testimony regarding what the seller said to you would be important evidence in determining your clients’ likelihood of proving their case.

24. Some of my clients want to include a photo of their families and/or write a letter to make their offer more attractive to the home seller. Does that violate fair housing laws?

Price and terms, price and terms – that’s the bottom line with any offer. You risk potential fair housing complaints when you use photos or descriptions of your clients calculated to appeal to a seller’s emotions.

However, if you do offer that option, make sure you offer it to all your clients. Inconsistency in this area can leave you open to a complaint of discrimination based on protected class. Your best service to your clients is to help them determine their best offer based on comparables and what they can afford. Listing agents should be especially wary when a buyer’s agent’s photos and client description persuade the seller to drop the price and terms.

25. I’m not prejudiced, but I really don’t want to work with a client who looks really poor, drives a bad car, etc. In my experience, they always have lousy credit and it’s a waste of my time to take them around. And let’s be honest, many of them happen to be racial minorities. Do I have to work with people like that?

Some of the most creditworthy people like to dress down. At the same time, some individuals who “look” okay can turn out to be your worst credit nightmare.

When you make assumptions based on observation alone, not only might you lose out on a good prospect, you also open yourself up to a potential fair housing complaint. You should treat all your clients the same way by screening them using non-discriminatory criteria. It’s okay only to work with people who have certain credit scores and financial qualifications. Just make sure you determine that before you turn someone away simply because you “think” they don’t meet your criteria. Don’t forget to document your interactions with all prospects to keep a record of why you decided not to work with someone.

26. For safety reasons, I ask for a driver’s license before working with a new prospect. Are there any fair housing issues here?

Asking for photo IDs is okay, as long as you’re consistent and flexible. Real estate agents have established a policy of requesting identification from prospects for safety reasons or to verify identity. Fair housing laws do not prohibit such a practice as long as the request is not based on a prospect’s protected class. For example, requiring ID only from people who appear to be immigrants would be discriminatory. Requiring a specific form of photo ID – such as a driver’s license – may be discriminatory because it can have a disproportionate impact on members of certain protected classes, such as people with disabilities or immigrants from other countries who may not have driver’s licenses.



Chapter Three

Working with Sellers

Listing agents who make their commitment to fair housing clear at the very start of a client relationship run into far fewer potential problems later on. Explain up front that you cannot work with a seller who acts in violation of the fair housing laws; explain that both you and the seller are liable for damages if you do not comply with fair housing. Your listing agreements should include a fair housing clause. You might also consider providing a written statement that the seller can sign to document your discussion and your understanding.

27. What should I do if a seller refuses to deal with a buyer based on discriminatory reasons?

Tell such sellers that their actions are a violation of the fair housing laws and that you cannot be involved in any sales transaction that is illegal. Inform them that:

- They will be liable for fair housing violations.
- You will notify your brokerage office and the buyer or buyer's agent that the seller is refusing to sell for discriminatory reasons.
- You can be called to testify against the seller in an investigation or lawsuit.

Also, tell them that if you go along with these illegal actions, you also can be liable for damages and can jeopardize your license. If they do not understand the seriousness of their actions and continue to stick by their discriminatory decision, document your interactions, terminate your relationship and inform your brokers immediately. You also may consider filing a discrimination complaint against the seller because you lost out on your commission.

28. A homeowner told me not to bring any gay or lesbian couples around to view his house. What should I do?

Discrimination based on sexual orientation and gender identity is prohibited throughout Washington state. Inform your seller that his or her request is illegal, and if they deter any potential buyers based on their protected class, you will have to terminate the relationship immediately.

29. How can I protect myself from a potential complaint of discrimination when there are multiple offers on the table?

If the seller chooses the offer with the best price and terms, fair housing will not be an issue. Potential fair housing violations usually arise when the seller accepts an offer below the best price and terms. If the seller considers other factors and accepts a lower offer, he should be prepared to provide a business-related reason that is not based on protected class.

One experienced and highly successful listing agent suggests putting all offers in sealed envelopes and opening them in front of the seller at the same time. By doing this you avoid letting issues of protected class status enter into the decision making process.

30. My client asked me to collect photos from serious potential buyers. She says she wants to see who might wind up living in her house. I think she may want to exclude buyers who aren't white. What should I tell her?

Your misgivings may be well founded. Your client has no business requiring photos from buyers. According to one experienced listing agent, "Pictures are really out of line!" If your client considers other factors besides price and terms, she can open herself up to a fair housing complaint. Explain to all your clients that sticking with price and terms is always the best practice. If they take other factors into account, they must be able to provide a business-related reason that is not based on protected class. You don't want to risk being found liable in a fair housing complaint because you helped the seller discriminate!

31. My client wants to sell his house to the daughter of an old friend. He's willing to take a lower price and worse terms. Does this violate fair housing laws?

No, this is not a violation. Fair housing laws are designed to prevent sellers from discriminating against buyers based on their protected class. A homeowner is free to accept a lower offer and worse terms from a friend or family member, as long as that's the real reason. Sellers who use the "old friend's daughter" line to avoid selling to someone based on his or her protected class may find themselves the respondent to a fair housing complaint. In any case, your client should be prepared to document why the lesser offer was chosen, just in case someone thinks their higher offer was denied for discriminatory reasons.

32. My client's homeowners association has "Covenants, Conditions and Restrictions" (CC&Rs) with race restriction language. Though they're not enforceable, what's the best way to handle this? Can we cross out the offensive language or get the CC&Rs changed?

You are correct. CC&Rs with restrictions limiting ownership based on a protected class (sometimes referred to as restrictive covenants or "Racial Occupancy" clauses) are considered void under the state's fair housing laws (RCW 49.60.224). Let the buyers know that these illegal, unenforceable terms in the CC&Rs will not affect the sale of the property.

Unlike most states where the process is complicated and expensive, Washington state law provides a straightforward, inexpensive process to strike that discriminatory language from the public records (RCW 49.60.227). The association can also amend the CC&Rs by vote to strike the discriminatory language. If the homeowners association's board is inactive or if the CC&Rs offer no guidance on how to pass amendments, any resident can file an uncontested petition. Contact the association's attorney for assistance. If the association is not willing to amend the CC&Rs, let the association board members know that they could be in violation of the fair housing laws.

33. I've heard there are lots of "secret shoppers" scouting open houses trying to catch real estate agents in a fair housing violation. Is that true?

Not likely. It's too expensive – and besides, testing doesn't work that way.

Fair housing agencies sometimes do run tests to take a general pulse on the compliance of real estate practices with fair housing laws. Here's an example: Let's say the Washington State Human Rights Commission wanted to see how Latino households were being treated in and around Yakima. They would contract with an independent testing organization, which would assign both Latino and white representatives to act like typical customers, and to report their experiences to the testing organization. The organization then would analyze the reports from all the participants and compare the results. If the tests showed differences in the way people were treated, the Human Rights Commission would contact the businesses to discuss the findings and to provide fair housing training and resources. If testing shows clear evidence of discriminatory practices, it can form the basis for an agency-filed complaint.

Fair housing agencies also use testing sometimes as part of an investigation of a complaint of illegal discrimination that has been filed. In this type of situation, test results may be used as evidence in the case.

However, the Fair Housing Partners of Washington do NOT regularly employ testers in order to "catch" real estate agents in some supposed violation.

34. I do many open houses, and I can spot testers before they walk through the front door. They always ask questions designed to set me up. How can I train my other agents to watch out for these situations?

It's surprising how many agents believe testers have approached them at open houses. We don't test that way. If you were being tested, you would not realize because testers never would use obvious questions to try to entrap you.

How can you train other agents to watch out for testers? School them on fair housing laws. Provide all your customers with the same professional service regardless of who they are. If you follow those simple rules, then you will have nothing to worry about in a testing situation. Fair housing agencies in Washington state want to work with real estate professionals, not entrap them.

35. I had just started talking to a white couple at an open house when a non-white couple walked in and waited until I was available. I didn't ask both couples the same questions. Can I be sued under fair housing laws?

Why do you ask your customers questions? Because you are trying to learn useful information about them. Are they buying or just looking? Are they working with another agent? Are they pre-qualified? What range?

Conduct your open houses fairly and professionally, and don't worry if you ask the same exact questions to each and every person, as long as you are seeking the same basic information. Your questions should not be the same because you think you might be sued; they should be similar because you want to learn similar information from all of your customers.

36. As a listing agent, am I obligated to ask a seller to leave when someone views the house, so the seller doesn't meet potential buyers face to face? If she meets some but not all prospective buyers, couldn't she discriminate? What is my potential liability?

Fair housing laws do not require a seller to leave when you bring by potential buyers. As long as sellers do not base their final decisions on a buyer's protected class, there should be no problem.

Is your seller refusing legitimate offers? Do you have reason to think her actions might be based on discriminatory reasons? Let the seller know that denial based on a protected class is unacceptable, and be prepared to sever your relationship if you believe that is the issue. The safest course of action is always to make sales decisions based on prices and terms.

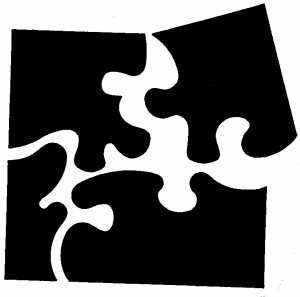
37. I notice that many buyers' agents present offers to the seller from clients who are the same race or national origin as the buyer's agent. To avoid potential bias, shouldn't there be a law that says only listing agents can present offers to the seller?

The law requires sellers and agents to treat everyone professionally, and not to consider a buyer's protected class when responding to a bona fide offer. A law like the one you suggest would presume sellers and agents are unable to do that!

38. Two women were listed on the offer I presented to my client, who then asked me if the women are lesbians. How should I respond?

How about, "I have no idea, and I really can't respond to such inquiries under fair housing laws!"

Even in jurisdictions where sexual orientation is not a protected class, an owner could face potential complaints based on sex or marital status. If your client turns down the offer without giving a reason, you may want to ask why. You should let him know that a discriminatory reason could cost him. You may also want to stop representing this client to avoid opening yourself up to liability. Your decision will depend on his actions and responses. This is an example of why it's a good practice for listing agreements to include a fair housing clause.



Chapter Four

Customer Service

Do fair housing laws collide with good customer service? Many real estate agents worry that complying with fair housing laws will prevent them from offering services tailored to their clients' specific needs and interests. Quite the opposite. Fair housing laws are not designed to turn people into robots. Offering quality services to **all** clients is simply a good business practice.

39. Fair housing seems to be all about the “intent” of a buyer, seller or agent. Real estate professionals are used to dealing with the paper-driven environment of contractual agreements. How can we incorporate fair housing laws into that environment?

Put fair housing principles on paper! Start by putting this guide into a three-ring binder labeled “Fair Housing,” and continue from there. The suggestions made in this guide are about policies and procedures that you can make your own – all with the goal of providing standout professional services. Fair housing laws fit right into the contractual, paper-driven environment you’re talking about.

40. Agents take pride in providing personal service to their individual clients. We don’t (and can’t) treat everyone the same. Doesn’t that contradict the intent of fair housing laws?

Fair housing laws absolutely support providing personal service to each of your clients. The law kicks in when you provide less favorable service to some people because of their protected class. To comply with fair housing laws, put procedures in place to ensure consistent, professional service for all your clients. That will leave you free to provide personal service to meet each of your clients’ needs, personalities, etc.

41. I got into an argument with another agent about selling to families versus single people. I thought it was a fair housing issue. How can we get the straight information?

The answers to this and other fair housing wagers are just a phone call away. Call your local fair housing agency! You'll find contact information in Appendix G. See Question 65 for information on selling to families versus single people.

42. Customers sometimes want to work with an agent or mortgage lender who is NOT of their own ethnic background. As the manager of a real estate office, can I honor that type of request?

No. As part of your office management policies, you should have a procedure to decide how to assign walk-ins or cold callers. The agent designated as next in line to take a prospect should get the nod. Tell the prospective client that all of your agents are highly qualified and provide excellent service, and that you cannot assign agents based on their protected class. If you assign your personnel based on protected class, you risk a fair employment complaint from your employee!

43. Is it legal for me to refer a non-English speaking client to an agent who speaks the client's language?

Yes – as long as the referral is based on clients' language needs, rather than their ethnicity. When you base your referral on clients' requests to work in their own language, you should be okay.

44. Do we have to provide translated documents for non-English speaking clients?

No. You may **choose** to provide translated documents as a customer service, but it is not required. On the other hand, isn't much of your focus on generating more prospects? For example, if you work in a community with many Spanish speakers, wouldn't it be great customer service to provide translations of your basic information and home buying resources? General home buying information already exists in several languages. Making that material available to prospects, along with other documents, such as your prospect questionnaire, helps you reach a broader range of prospects and clients. Note that if you work for a public agency selling federally funded dwelling units, you are required to effectively provide key information in a language the client understands.

45. I have a Russian prospect who doesn't speak English. I don't speak Russian, and I don't know anyone who does. Do I have to work with this prospect?

Yes! You cannot turn away prospects simply because of an accent or because communication presents an extra challenge. Prospects with limited English proficiency or a heavy accent may be covered under fair housing protections based on national origin.

Make every reasonable effort to provide your services in English, just as you would for fluent English-speaking clients. Ask them if they have anyone they could bring with them who speaks English and can interpret. Consider hiring someone to interpret, finding a community organization that can help, or using a real-time foreign language translation service available over the telephone.

No one expects you to master the dozens of languages spoken by people in our state. However, non-English speaking clients buy houses every day. Learning to work with clients who speak other languages and being open to translating some useful documents can expand your client base considerably and open up more business opportunities.

46. I'm a buyer's agent. Time and again, I find people of certain ethnicities are a real hassle to work with. I'm not racist, but why should I have to accept this type of person as a client?

Because it's the law. If you refuse to work with people simply because of their protected class, you make yourself vulnerable to fair housing complaints. Your reputation – and eventually your business – will suffer.

What goes into your decision to work with particular clients? You want to work with people who are qualified and who are serious about purchasing a home. Use your same criteria with everyone to decide if you want to have a working relationship with them. If you apply this screening process to all prospects, your interactions with your clients will improve and your business decisions will be legal and documented. And remember, difficult people come in all races, ethnicities and genders!

47. A client came into our office and started talking to our only African American agent. When the agent briefly stepped away, the client told our receptionist she'd rather work with someone else. The receptionist said she had to continue working with that agent. The next day, I started working with a client over the phone and later that week, I realized she was the same walk-in client. How should our office handle this type of situation?

It is up to you and your office to decide how you want to manage this situation. Your office handled the initial contact correctly by following your policy that walk-ins should work with the first agent assigned to them. Your subsequent contact with the client was inadvertent. You may feel uncomfortable about it, but you and your office have not violated any fair housing or fair employment laws.

To prevent similar mix-ups in the future, make sure your policy addresses the issue of "agent-switching." There are valid reasons why a client may want to change agents; at the same time, it is a violation of fair housing law to allow a client to switch agents for discriminatory reasons.

48. My client drives me crazy. He misses scheduled appointments, doesn't give me promised information, and passes up good homes because he's waiting for a "super deal" that will never happen. He happens to be Asian and I'm Latino. I want to sever our relationship, but I fear being tagged with a fair housing violation. Any thoughts?

Fair housing laws do not require you to keep working with problem clients. As long as your motivation is not discriminatory, go ahead and sever the relationship. Be sure to document your actions. If the situation ever became the basis for a fair housing complaint, investigators would want to know how you handle non-Asian clients who act in a similar way.



Chapter Five

Working with Mortgage Lenders, Brokers, and Industry Professionals

Mortgage lending is a fair housing issue. The 2007 update to the State of Washington's Analysis of Impediments to Fair Housing Choice identified mortgage lending patterns indicating the unequal treatment and underservice of minority markets. For example:

- Native American, African American, and Hispanic homebuyers are less likely to be approved for conventional mortgage financing but disproportionately likely to obtain sub-prime or predatory mortgage products.
- Minority borrowers are disproportionately likely to obtain government insured mortgages compared to conventional financing.
- The proportion of subprime mortgages originated to Hispanics and African-Americans in 2005 was nearly double the rate of subprime mortgage originations to white borrowers.
- Mortgage lending testing conducted in Seattle, King County, and Eastern Washington revealed instances of differential treatment of prospective home buyers.
- According to the federal General Accountability Office (GAO), nearly all of the nation's growth in home mortgage lending to minorities between 1996 and 2005 was comprised of subprime mortgages. As the market share of subprime mortgage originations grew from 2% in 1996 to 26% in 2005, the share of FHA home purchase loans to minorities decreased from 32% to less than 7% in the same period.

While subprime lending serves a valid purpose by increasing access to credit, problems occur when customers who qualify for conventional loans are steered to the subprime market and end up paying much more for their loans.

Real estate professionals often refer their clients to mortgage lenders and brokers. Some agents even serve as mortgage brokers to their clients. If you play any role in the mortgage lending process, you should understand the potential fair housing issues that can emerge.

49. Sometimes my clients ask me to look through the loan documents for a house I helped them find. What are some of the things I should be aware of, and what should I do if I find any problems?

The best advice you can give your client is to tell them to have their loan documents reviewed by an attorney. Give them the number for the Washington State Bar Association or your local bar association for referrals. This could be the best hour of legal services they ever buy.

In general, when you are looking through loan documents, take a close look at the Good Faith Estimate (GFE), which your client should have received within three business days of the loan application. Escrow companies use the GFE to develop their estimates of closing costs. Look over your client's GFE for any unusual or unexpected costs. Since the GFE discloses all fees, discounts and charges, you can use it to spot potential "padded" fees such as a loan origination fee, extra charges built into the closing costs, etc.

Recommend that your client get at least two GFEs from different companies, and compare their costs based on the same loan amount. In addition, you should compare your client's GFE with the HUD-1 settlement statement of costs that was prepared for the closing. Significant differences between the GFE and the HUD-1 may be a sign of loan gouging. But watch out – don't offer advice or information unless you have the expertise necessary to do so! This area is complicated.

50. I have a good working relationship with a few mortgage brokers and I often refer clients to these brokers. Is there anything wrong with this from a fair housing standpoint?

Not necessarily. It's always a good idea to be familiar with the business practices of anyone to whom you refer clients. At the same time, you should NOT refer your clients to specific brokers based on the clients' protected class status. Consider creating a standard referral list of brokers that you hand out to any client who asks for it.

51. I refer clients to a mortgage broker who's been in the business for a long time. What can I do to make sure she's keeping current on all the latest loan products? How can I keep myself informed?

If part of your customer service involves referrals to mortgage lenders and brokers, then you owe it to your clients to keep yourself informed, as well as to pass on the same information to your brokers.

The Washington State Housing Finance Commission maintains referral lists for loan products and programs both old and new. Contact them toll-free at 800-767-4663 (HOME) in Washington State or visit www.wshfc.org.

52. When is an FHA loan appropriate for a buyer, and when might a conventional loan be a better choice?

In general, FHA loans can be a good option for prospective home buyers who do not have the resources to make a conventional down payment (at least 10% of the purchase price). FHA loans also allow buyers to finance a larger percentage of closing costs. On the other hand, rolling the closing costs into the loan drives up the total cost over the life of the loan. FHA loans also involve more regulations and require more extensive inspections. You may want to refer your clients who are considering FHA loans to first time home buyer classes and resources about down payment assistance programs. See Appendix D for referrals.

Unless you take the time to study the many mortgage products that are available, you are better off to admit your unfamiliarity than to pretend expertise. Rather than advise your customers, have a list of resources available and encourage them to take the time to fully educate themselves about all available options.

53. I'm both a real estate agent and a mortgage broker. Are there any fair housing issues I should consider?

The same fair housing concerns apply as for all real estate transactions. At the very least, you should document all your actions, in case any questions arise later.

Of greater concern are the potential conflicts of interest in this situation. It can be difficult to separate an agent's desire to close a deal with a broker's interest in setting up a loan. You may want to consider talking to a real estate attorney to iron out any potential conflicts ahead of time and set up systems to protect yourself and your clients.

You should also provide your potential buyers with a clear choice of lenders to avoid the appearance of steering them to yourself or any other specific broker.

54. Could it be discrimination for a home seller to refuse an offer from a prospective buyer because the buyer requests a delayed closing to account for the more-complicated VA mortgage approval process?

In 2007, the Washington Law Against Discrimination (WLAD) was amended to prohibit discrimination against honorably discharged veterans and discrimination based on military status in employment, housing, public accommodations, and other areas covered by the WLAD. An honorably discharged veteran or an active or reserve member in any branch of the armed forces of the United States, including the National Guard, Coast Guard, and Armed Forces reserves.

55. My client is a lawful permanent resident with nontraditional credit. Where can I refer him to get the fairest loan product?

There are established guidelines for using nontraditional credit factors to estimate a customer's creditworthiness. Most lenders are familiar with these guidelines and will make use of them. Watch out for a lender who refuses to deal with a client with nontraditional credit – s/he could be using it as an excuse to avoid working with someone based on a protected class such as national origin.

Any legal resident can buy a home anywhere in the U.S. Treating a legal resident differently than a U.S. citizen can lead to a complaint of illegal discrimination based on national origin. Refer your client to the resources in Appendix D.

56. I've learned that a real estate broker knowingly steers his clients to mortgage lenders that I regard as predatory. What should I do?

If you believe that laws are being broken, you should report the violators to the Washington State Department of Financial Institutions (DFI), which regulates financial institutions and mortgage brokers in this state. If this situation involves someone working in your office, you should consider speaking either with the broker or to your managing agent. Predatory loans may also be violations of fair housing laws. Therefore, predatory product steering should be reported to fair housing agencies as well.

A predatory loan is a dishonest loan that harms borrowers by making it difficult or impossible to keep up with payments. Predatory lending threatens the reputation of everyone in the industry. In addition, lawsuits against predatory lenders have been filed. Real estate agents have a vested interest in helping to support the integrity of the housing market. For more information on predatory lending, see Appendix F.

57. I know a real estate agent who referred his client to a mortgage lender who I think is predatory. I believe the agent did it by mistake, but I'm concerned. Can I talk to him about this?

Yes, absolutely. Both real estate agents and mortgage lenders rely on the public's perception of integrity. It is important for people within the industry to "police" themselves. If your colleague made a mistake, he will appreciate your discussing it openly.

58. How can I protect a client from predatory lending?

A number of businesses, nonprofit organizations and government agencies work with home buyers to educate them about predatory and subprime lending. The data indicates that some individuals end up with high interest loans because of their protected class status when they could qualify for loans at a lower rate. People should make absolutely sure they don't qualify for a lower rate before signing a high interest loan! See Appendices D, E, G.

59. All the brokers and housing inspectors I work with and refer clients to are white men. Is this a fair housing violation? Should I be concerned?

If everyone to whom you refer clients provides fair, consistent service to all customers regardless of their protected class status, no fair housing laws have been violated. Should you be concerned? That's a different issue. Diversity is not just a good thing – it's also good business. Diversifying your professional network gives opportunity to more people and may help you reach customers you didn't know existed.

60. What should I do if I think an appraiser is making either an unjustifiably high or low appraisal?

Ask to look at a copy of the appraisal. As a real estate agent, you have access to comparable sales amounts for similarly situated houses. If the original appraisal appears vastly different from comparable sales, suggest that your client ask the lender for a re-evaluation of the appraisal. Your client also can ask for a second appraisal, although that will cost an additional fee. Remember, a highly unusual appraisal could be a sign of predatory lending or a possible fair housing violation. Document your own actions to protect yourself.

61. Where can I get more information about down payment assistance programs for first-time home buyers? Where can I refer them to learn about the home buying and mortgage processes?

There are several programs for down payment assistance and loan products for first-time home buyers as well as classes on home buying and the mortgage process. Please see Appendix D for a complete listing. The Washington State Housing Finance Commission offers workshops for first-time home buyers. They also know organizations in your area that offer these services, as well as lenders certified to offer specific programs. Contact them toll-free at 800-767-4663 (HOME) in Washington or visit www.wshfc.org.

One of the newest assistance programs involves the Section 8 program. The Section 8 program, also known as the Housing Choice Voucher Program, is a federal government program that assists very low-income families, the elderly and those with disabilities to afford housing in the private housing market. Local housing authorities administer the subsidy provided by HUD to assist low-income households by paying a portion of a unit's rental cost.

In support of its efforts to expand homeownership, HUD now enables low-income families to utilize their housing assistance toward a mortgage payment. In the City of Seattle, City of Bellevue, and unincorporated King County, those who participate in the Section 8 Program are protected against discrimination. This protection would also apply to prospective homeowners who seek to utilize their Section 8 assistance payment to become homeowners.



Chapter Six

Families with Children and Housing for Older Persons

The 1988 amendments to the federal Fair Housing Act added families with children as a protected class. (Fair housing laws refer to this as “familial status” or “parental status.”) Families with children include households that have one or more children under the age of 18, pregnant women, and adults who intend to take custody of a child in the near future. Fair housing laws make it illegal to refuse to sell to a family because they have children. It also is illegal to subject families with children to different terms and conditions of residency, harsher rules, or restrictions on the use of common areas.

An exception under the Fair Housing Act allows a housing community or facility to refuse to sell to families with children if their residents are 55 and older, or 62 and older, and if the facility meets certain conditions (discussed in more detail below).

62. Can I say “Families Welcome” in advertising or on community signage?

Yes. You may market to families with children without violating the fair housing laws. Indicating that families with children are welcome does not deny any other protected class the opportunity to purchase housing.

63. Should I avoid certain words or phrases to make sure I don’t discourage families with children?

When advertising a residence for sale, avoid words or phrases such as “adult community” or “perfect for mature professionals,” which may reflect a preference for buyers with no children. Also, avoid telling families that they might prefer to consider property in another neighborhood where there is a playground nearby or a location away from heavy traffic. Never assume you know what a family is looking for in a residence.

64. I'm showing a condo that sits right over some water and has wide gaps between the balcony rails. A family is interested in the place, but I don't think it's safe for their young child. Shouldn't I say something?

No. Safety concerns are not a valid reason to deny housing or otherwise to discourage families with children. It is up to the family to decide how to deal with safety concerns. Because an unsafe condition can imperil anyone, make sure to point it out to every home seeker, not just families with children.

65. A listing agent told me her clients would prefer to sell their house to a family. I have several single people who are interested in the house. Does the seller's plan violate fair housing laws? If so, what should I do?

Fair housing laws do not prohibit favoring families with children because there is no protected class that would be harmed by this action. (A "person without children" is not a member of a protected class). If a seller turns down your clients' offers simply because they do not have children, the seller has not violated fair housing laws.

On the other hand, it's a risky decision. Anytime owners sell a property based on a preference, they leave themselves open to fair housing complaints. People whose offers are rejected may perceive bias in the seller's decision, and allege illegal discrimination based on other protected classes, such as marital status, gender, race or sexual orientation – to name just a few.

The safest course of action is always to evaluate offers using prices and terms, rather than more personal considerations.

66. Can I tell clients with families what the schools are like or if sex offenders are registered in the area?

Yes, you may. This is not a violation of the fair housing laws.

67. I'm selling a condo in a community that has a two-per-bedroom limit on occupants. A family of five made an offer on a two-bedroom unit. Can the community limit the number of occupants?

The fair housing laws allow for **reasonable** limits on the number of occupants allowed in each unit. When a community establishes such limits, it impacts families with children more severely than households without children. Communities must justify their use of occupancy standards by demonstrating legitimate business needs. Complaints filed by families with children involving occupancy standards are reviewed on a case-by-case basis because each case presents a unique set of facts. No clear rule or number is possible because the size, configuration and location of units are different.

HUD has established a policy that presumes that a two-per-bedroom occupancy standard is generally reasonable. This presumption is not absolute, however, and the HUD policy notes other considerations to keep in mind. Some jurisdictions in this state have adopted occupancy policies or zoning codes allowing more than two people to a bedroom. HUD and WSHRC use a set of factors set forth in guidance memoranda issued by each agency and both defer to local occupancy codes.

Simply establishing a two-per-bedroom standard may not protect the condominium association from a finding that the standard is overly restrictive. Most rental housing providers can justify a reasonable standard based on protecting their asset from increased wear and tear resulting from an increased number of occupants, but the condo association may have difficulty arguing business necessity where it does not own the unit at issue.

Because you are dealing with a time-sensitive issue, consider measuring the rooms, checking the local zoning codes, and running the situation by your local fair housing agency. The agency can outline the options available to you, the seller and the buyer depending on the information for your specific case. For more information, see www.metrokc.gov/dias/ocre/occupancy.htm.

Occupancy restrictions that explicitly limit the number of children in a bedroom are not legally binding. For example, a condominium CC&R that requires an owner to adhere to a **“one-child-per-bedroom” rule** would be considered discriminatory on its face because it is very restrictive and singles out children. It should immediately be removed from the CC&Rs to avoid any potential complaint of discrimination by families trying to buy or lease in the complex. See Question 32 for more details.

68. My client is selling a condo in a community that requires that an adult be present when children under 18 use the pool. They also post “adult only” swim hours. Can they do that?

Communities that require adult supervision in some areas should be careful not to establish unnecessary restrictions. The condo association’s rule could discourage a family from buying your client’s condominium. Let the association know that they should avoid establishing overly restrictive policies or they could face potential fair housing complaints.

The condominium board can contact its local fair housing agency to learn how to bring their rules into compliance with fair housing laws. The community should base its supervision requirements on existing health and safety laws. If the community’s rules are in the range of these age guidelines, they will likely be considered reasonable under fair housing laws.

For pools, the Washington Administrative Code states that when no lifeguard or attendant is present at a pool, children 12 years or younger must have a responsible adult (18 or older) present (WAC 246-260-100). This law permits children between the ages of 13-17 to swim with at least one other person present who is 13 or older.

Pool rules should be reasonable for the use and enjoyment of **all** residents. "Adult swim" hours are not permitted. Designated "lap swim" sessions are fine as long as they are open to all residents.

69. I have a listing for a condo in a community that has a sauna and workout room. What age limits can they establish under fair housing laws?

Some facilities (like saunas or hot tubs) might be dangerous for very young children. WAC 388-148-0170 requires "age and developmentally appropriate supervision of any child that uses hot tubs, swimming pools, spas, and other man-made and natural bodies of water."

When setting age limits for fitness centers, it is helpful to look at industry standards, because there are no state or federal laws that state the age of people who can safely use weight training equipment. Many fitness centers permit children aged 15-17 to use fitness equipment without adult supervision, and require adult supervision for children aged 13-15. Equipment manufacturers' height and weight recommendations may also provide reasonable guidance. Remember, there is a difference between rules for equipment use and rules for who can enter the room. Children should be permitted to accompany their parents or a responsible adult, so long as they don't touch the equipment or cause disturbances for others.

70. What is the Housing for Older Persons Act?

The Housing for Older Persons Act (HOPA) was signed into law on December 28, 1995. Under the Fair Housing Act, as amended by HOPA, a community that qualifies for the "housing for older persons" exemption can refuse to rent or sell to families with children. The community must meet certain requirements. Three types of housing qualify under HOPA:

- HUD Secretary designated elderly housing
- Housing for residents who are 62 or older, whether private or assisted
- Housing intended and operated for occupancy by residents who are 55 years of age or older. For 55 or older housing, the following criteria must be met:
 - At least 80% of the occupied units are occupied by at least one person who is 55 years of age or older
 - The owner or management of the housing facility or community must publish and adhere to policies and procedures that demonstrate an intent to operate as 55 or older housing
 - The facility or community complies with rules issued by the HUD Secretary for verification of the age of the occupants through reliable surveys and affidavits.

The HOPA exemption applies only to the familial status protections of the Fair Housing Act. Qualified HOPA communities cannot discriminate on the basis of other protected classes such as race, religion, national origin, etc.

71. How can I verify a community's intent to operate as a "55 or older" community?

The first thing you should do when listing a home in a HOPA community is to obtain formal certification in writing that it qualifies for the HOPA exemption.

Any signage or printed material should include HOPA language stating that it is a "55+ Community," an "Age 55 or Older Housing Community" or similar language. It should be clear to anyone driving by, calling to inquire about, or living at the property that it is a "55 or older" community. The community provisions, rules, regulations and any written materials should also indicate that it is a "55 or older" community.

When you advertise or describe the residence to prospects, make sure they know that it is intended for occupancy by at least one person age 55 or older per unit. Such advertising is affirmative evidence that the community qualifies for the HOPA exemption. Avoid using phrases such as "adult living" or "adult community" or telling prospective buyers that it is an "adults only" community.

If for some reason the community doesn't actually qualify as a HOPA community, the law specifically protects real estate agents from damages if they believed that the 55 and older exemption applied to a particular community. (This is known as "good faith reliance.") You would have to show that you did not actually know that the community was ineligible for the exemption, and that the community certified to you formally in writing that it qualified for the exemption.

72. Do I need to verify a purchaser's age when I am selling a home in a "55 or older" community. If so, how should I go about getting it?

Let the purchaser know that they will need to verify that they meet the age requirement; however, it is up to the community to make sure that the purchaser is 55 or older. HOPA requires that a housing facility or community compile a list of occupants and verify the ages of the occupants.

The community should have a procedure for age verification. A variety of documents are considered reliable as age verification documentation, including a birth certificate, a driver's license or a passport. HUD's HOPA rule lists various documents and other methods for verifying age.

73. Can a "55 or older" community impose restrictions on children under 18 in certain common areas at certain times?

Yes. If the "55 or older" community qualifies under HOPA, it can restrict the use of amenities by children under 18 who are guests of the community's residents. Generally, once a community is exempt from familial status protections under HOPA, it is exempt for all purposes and can apply such restrictions to its residents.



Chapter Seven

People with Disabilities

Fair housing laws provide general protections against discrimination of people with disabilities. They also require the provision of reasonable accommodations as needed. Civil rights agencies receive frequent calls about access and accommodation issues, and are available to help you interpret these requirements.

74 What disability laws apply to the sale of houses?

Fair Housing Act: The federal Fair Housing Act and local fair housing laws prohibit sellers or people in the real estate industry from discriminating against people because of their disability or the disability of anyone associated with them. The laws also include accessibility design and construction requirements for multifamily housing.

Section 504 of the Rehabilitation Act of 1973: Section 504 prohibits discrimination based on disability in any housing, program or activity receiving federal financial assistance.

Americans with Disabilities Act: In most cases, the ADA does not apply to residential housing. **Title III** of the ADA covers public and common use areas at housing developments when these areas are open to the general public (such as a sales office) or when they are available for use by the general public (such as a community room that is rented to non-residents).

75. Are there any differences between federal and state or local laws regarding disability?

Yes. Washington state law has a broader definition of disability than federal laws. Under federal laws, a disability must “substantially limit a major life activity.” The Washington State Law Against Discrimination, WAC 162-22-020, defines disability as “the presence of a sensory, mental or physical disability when a condition is medically cognizable or diagnosable.” A condition is a “sensory, mental, or physical disability” if it is an abnormality and is a reason why the person with the condition did not get or keep the housing in question, or was discriminated against in other terms and conditions of housing.

Washington's definition includes people with temporary disabilities. A person with a leg injury who requires several weeks of recovery would be considered disabled under state law and should be given temporary accommodations as needed.

76 Under fair housing laws, who is considered to be disabled and who is not?

Under fair housing laws, the definition of disability includes people who have a current mental or physical disability. The laws also include those who do not currently have a disability, but have a record or history of one. These laws also protect nondisabled people who are regarded or perceived as disabled, and who are treated negatively because of that perception.

The following people are not considered to have a disability under fair housing laws:

- Current illegal drug users
- Anyone with a conviction for the illegal manufacture or distribution of a controlled substance.

77. My client's home has a ramp and other access features. She'd like to market it to people with physical disabilities. Can we do that?

Yes, she can market her accessible home to people with disabilities. This is not only legal, it is encouraged. To expand marketing options consider working with social services agencies and organizations for people with disabilities.

78. What can we do to make our services more available to people with disabilities?

You may want to include a notice in your printed materials that states your willingness to provide reasonable accommodations. A "reasonable accommodation" is a change, adaptation or modification to a policy, program or service, which will allow a person with a disability to benefit. All requests for accommodation must be considered on a case-by-case basis through an interactive process between the real estate professional and the client.

It's a good idea to develop a reasonable accommodation policy to distribute to your staff and clients. Train your staff to respond to accommodation requests in a timely and professional manner. Finally, make sure that your office meets the accessibility standards under state and federal fair housing laws. For older buildings, make sure that you have an accessible business office, and either accessible on-site parking or an accessible route from public transportation to your office.

For more detailed information, see the "Sample Policy on Reasonable Accommodations" available from the Fair Housing Partners of Washington State.

79. A blind person contacted our office about buying a house. She's new to the area and wants us to show her several different neighborhoods. Do you have advice about working with visually disabled people?

Ask her the same question you ask all your new prospects: "How can I help you?" She will tell you exactly what her needs are and how you can be of service. If she does ask for some sort of accommodation because of her disability, then you should comply with any reasonable request. For example, she may request that you read written information aloud or provide it in large print. If her vision is better during the day, she may ask to see properties during daylight hours only. She may need to take your arm to navigate over a rough pathway or down a flight of stairs. If she uses a guide dog, it should be allowed to accompany her throughout the viewing of properties.

80. A deaf couple came into my office looking for a home. I hired a qualified sign language interpreter to assist. It's great – now I'm getting lots of new deaf clients! Did I HAVE to hire an interpreter?

What a smart way to expand your clientele! Your readiness in providing sign language interpreters obviously paid off by word-of-mouth recommendations.

The Fair Housing Act requires real estate professionals to ensure nondiscrimination "in the terms, conditions, or privileges of sale of a dwelling, or in the provision of services" for clients with a disability. In addition, Title III of the Americans with Disabilities Act considers real estate offices and lending institutions to be "places of public accommodation" which are required to provide effective communication with customers who are deaf, hard of hearing, or speech disabled. The level of communication needed will vary depending on the complexity and confidentiality of the topics of conversation.

A sign language interpreter might not be necessary in most minor transactions such as showing the clients available homes. Upon request with reasonable advanced notice, you are required to provide an interpreter at your expense when working through the legal paperwork involved in purchase and sales agreements and loan documents, for example.

Most clients who are deaf or hard of hearing will alert you to the best method of communication. Maintaining face-to-face contact is important to communicate with a client who reads lips and/or picks up cues from facial expressions. One option for less complex communications is to share a computer for typing questions and answers back and forth, if the client finds this approach is effective. For some deaf individuals, English is a second language and English skills vary. Sometimes simply writing notes back and forth will suffice, but it can be burdensome. As you found out, sometimes an interpreter may be the right thing to do even though other means of communication can suffice. Clients can suggest interpreters and may be able to recommend a lower cost option for you!

See disability access resources at www.metrokc.gov/dias/ocre/provider.htm.

81. A wheelchair user wants me to show him some homes. What should I do when the home he wants to see is inaccessible to him?

Keep in mind that people use wheelchairs for a wide variety of reasons. Some wheelchair users can walk a certain distance with a cane or walker, or even without assistance. At the outset of the process, you can ask this prospect "How can I help you?" He will tell you what his needs are and how you can be of service.

It is appropriate to alert him to the inaccessible features of this home, and to consult with him about how he wishes to manage the viewing. The house may be more accessible than you think. If he can walk with assistance, he may need to take your arm to navigate over a rough pathway or down a flight of stairs. It would be unreasonable for him to expect you or your staff to carry his wheelchair. You may wish to consider creative alternatives, such as videotaping home interiors that he could watch later.

82. A prospect brings a dog with him wherever he goes. He says it's a service animal, but I've never seen it do anything but sleep. I don't want this animal shedding on the back seat of my car. What should I do?

It may not be obvious what the individual's disability is, why your client needs the service animal, or what the service animal does for him (and it's not appropriate to ask!). If he identifies the dog as a service animal and wishes it to accompany him wherever he goes, you should permit that as a reasonable accommodation, as long as the animal is well behaved and does not make a mess. If you are concerned about dog hair on your car seat, perhaps you can spread out an old towel or blanket for the dog to lie on.

Read on for basic facts about service animals:

- Some fair housing laws define a service animal as "any animal that is individually trained to do work or perform tasks for the benefit of a person with a disability." Other fair housing laws define them as "an animal that does work, performs tasks or provides medically necessary support for the benefit of an individual with a disability." King County's fair housing law also includes "therapeutic companion" animals.
- Service animals are **not** pets. A person with a disability uses a service animal as an auxiliary aid – similar to the use of a cane, crutches or wheelchair. Fair housing laws require that service animals be permitted despite "no pet" rules.
- While the most common service animals are dogs, they may be other species, such as cats, monkeys, birds or other animals. Service animals may be any breed, size or weight.
- Service animals need no special licenses or visible identification. While some owners of service animals choose to put special collars or harnesses on their animals, there is no legal requirement for service animals to wear visible identification (i.e., special collar or harness) or to have documentation (i.e., license, training certification or identification papers).

- Service animals need no “certification”. There are no state or national standards for certifying service animals, and no government agencies provide certification.
- A person may train his or her own service animal.
- Because service animals provide different types of assistance, in some cases a person with a disability may require more than one service animal.
- The service animal’s owner is responsible for the animal’s care, should observe leash laws, properly dispose of animal waste, and ensure the animal behaves around others.
- Service animals should be under the control of the owner.

For more detailed information, see the Sample Policy on Service Animals available from the Fair Housing Partners of Washington State.

83. A condo association with a “no pets” policy is refusing to allow my client to purchase a unit because he has an “emotional support animal.” What can I do?

A service animal for a person with a disability is not a pet. An emotional support animal prescribed by a health care provider is a type of service animal. It is a reasonable accommodation for the condo association to permit your client to purchase the unit and live there with his animal despite the no pet policy.

In some cases, the disability and need for a service animal is obvious, such as when a blind person uses a guide dog. If the need for a service animal is not obvious, the condo association board can request that your client provide a letter from his health care provider verifying that he has a disability (but no details about it!) and has a disability-related need for this animal.

A resident with a service animal is responsible for the animal’s care. The animal’s owner should observe leash laws, properly dispose of animal waste, and ensure the animal behaves around other residents and does not break noise rules.

84. A homeowners association let my client have a service animal but the board wants to know what they should say to other owners who are angry about the decision or who want a pet themselves.

If other residents ask why your client has an animal in a “no pet” complex, the board can say “Federal and local fair housing laws require our community to make exceptions to the ‘no pets’ rule under certain circumstances. If you believe you may qualify for an exception, management would be pleased to schedule a confidential meeting to discuss this matter.” The board should not mention disability, as doing so would violate your client’s right to privacy. Ideally, the association has a reasonable accommodation policy and all residents are aware of it, so service animals should not be a new concept for anyone. The board is responsible for accommodating disability-related needs – allowing service animals does not mean they must permit nondisabled residents to have pets.

85. A buyer with a Rottweiler as a service animal made an offer on a condo. The condo association says that their insurance company won't insure certain breeds, including Rottweilers. What should we do?

The condo board should ask its insurance provider to make a reasonable accommodation or exemption or waiver in its policy under the fair housing laws. Ask the insurance company to waive its blanket prohibition of a certain breed, and instead to make an individual assessment of this service animal's behavior. If there is no evidence that this service animal is dangerous, the insurance company may have a hard time defending its denial of a reasonable accommodation request. A safety determination has to be made on the facts and not on speculation about what a particular breed of dog might do. The condo board, the seller, the seller's agent, the buyer and his agent could all file fair housing complaints against the insurance company. If found in violation of fair housing laws, the insurance company could be responsible for any damages that the parties had to incur waiting for them to respond to the request.

86. A homeowners association is refusing to let my client sell her townhome to a buyer who needs a nearby accessible parking space as an accommodation. Parking is at a premium in this complex; the current space for this unit is up a hill. What should I do?

Meet with the homeowners association and the buyer to work out a parking accommodation with them. Homeowners association boards have a responsibility to accommodate reasonable requests. Before the meeting, talk with the buyer to discuss her specific parking needs. Many people who need accessible parking do not need an extra-wide space with an access aisle; they use a regular size space nearest (or on the most accessible route) to their front door.

Generally, a state disabled parking permit is sufficient proof of need for a reserved accessible parking space. The buyer should bring the permit or a copy to the meeting. If she has no permit, she can provide the association board with a letter from her health care provider confirming that she requires accessible parking due to a disability that limits her mobility. This is sufficient documentation of her need for the association to act on her accommodation request.

Homeowners association boards should provide assistance within their means to the person seeking a parking accommodation. If the space requested is under the control of the owner of another unit, the two owners must be allowed to negotiate a swap or some other agreement so the person with the disability can have an accessible space close to her unit.

If the association refuses to assist in this process or denies your client the opportunity to arrange accessible parking, causing the sale to fall through, you, your client and the buyer can file a discrimination complaint.

87. A prospective buyer with a wheelchair wants to purchase an inaccessible condo. He's willing to build a ramp on the front deck at his own expense. The condo association board turned down the proposal, claiming the construction would "deface" the property. Both the condo owner and buyer are on hold. What should they do?

Under fair housing laws, the prospective buyer should be allowed to make a "reasonable modification," a physical change to the property necessary for full enjoyment of the housing. The Department of Justice (DOJ) and HUD published extensive guidance regarding reasonable modification issues in March 2008 in a document entitled Reasonable Modifications Under the Fair Housing Act.

Here are a few considerations about these modifications:

Quality of work: The condo board may condition permission for a modification on the buyer's provision of a reasonable description of the proposed modifications, as well as assurances that the work will be done in a professional manner and that required building permits will be obtained. Within reason, the condo board may require that the design of the ramp meet the aesthetic guidelines of the complex (for example, having the color of the ramp match the deck or building color).

Restoration: The condo board may **not** condition permission for accessibility modifications on the buyer agreeing to restore the premises to the condition that existed before the modification. If the buyer should ever move out, the condo board also should allow modifications to common areas to remain.

Insurance: The condo board may **not** condition permission for accessibility modifications on the buyer agreeing to purchase special liability insurance.

A growing number of buyers who are elderly and/or disabled are shopping for accessible housing choices, or wish to age in place. The addition of a ramp or other accessible features in the common areas may make this condo community a more desirable housing unit for many prospective buyers. Remember that individuals who become disabled while they are residents can request reasonable modifications any time they are needed.

88. My client applied for a loan on a duplex and brought all of his financial information to the broker. The broker asked several intrusive questions about his disability that seemed to go beyond determining if he could afford the loan. Is this legal?

No. It's natural to have some curiosity about a person's disability. However, making personal inquiries about a disability during a business transaction is both inappropriate and illegal under fair housing laws. Generally, professionals involved in the sale or loan process should ask a person with a disability the same questions that they ask **all** loan applicants. You can advise your client to contact his local fair housing agency.

If a loan seeker requests a reasonable accommodation, the broker can ask what type of help is needed. (For example, if a buyer asks for written materials in large print, the broker can ask what size of type would be helpful.)

Here are some examples of questions that should **not** be asked:

- Do you have a disability?
- How severe is your disability?
- Why are you getting SSI?
- Can I see your medical records?

You may also want to tell the broker about the list of disability access resources at www.metrokc.gov/dias/ocre/provider.htm.

89. What are the general access requirements under fair housing laws?

The Washington State Building Code incorporates both the federal Fair Housing Act and the Americans with Disabilities Act access requirements. This is a complicated area, so we present general information here. We recommend that you contact the Washington State Building Code Council or your local fair housing agency for more information.

For properties built before 1976: Title III of the ADA applies to public areas, including sales or rental offices, display homes that are open to the public, and any route of travel from public transportation to those areas. You should remove barriers that impede the access or use of these areas for a person with a disability where such removal is "readily achievable." Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense." This is determined on a case-by-case basis. Some of the factors considered are the nature and cost of the action needed, and the overall financial resources of the housing provider. If you are planning any additions or alterations to your office, you should refer to state and federal laws for new construction (discussed below) to make sure you comply with the applicable standards.

For buildings constructed after 1976: The Washington State Barrier-Free Design Regulations were adopted in 1976. These regulations established accessibility standards in the common areas and added access standards for individual dwelling units.

If the housing was constructed after 1976 and has 11 or more units:

At least 5% of the units (with a minimum of one) must be what is presently designated as a "Type A" dwelling unit. "Type A" dwelling units require greater maneuvering space in the kitchens, bathrooms and doorways to better accommodate wheelchair users. Structures designated as a "townhouse" under the International Residential Code and built after 2004 may be exempt from this requirement. For more information, contact your local building department.

Additional standards for buildings constructed after March 13, 1991: A complex is covered under fair housing laws if it has four or more units and was constructed for first occupancy on or after March 13, 1991. All units in an elevator building must be accessible and all ground floor units in a non-elevator building must be accessible.

Under fair housing laws, buildings built after March 13, 1991, must have:

1. An accessible entrance on an accessible route
2. Accessible public and common use areas, including parking areas, curb ramps, passenger loading areas, building lobbies, lounges, corridors, elevators, public restrooms, rental or sales offices, drinking fountains or water coolers, mailboxes, laundry rooms, community and exercise rooms, swimming pools, playgrounds, recreation facilities, nature trails
3. Usable doors
4. Accessible routes into and through the dwelling unit
5. Accessible light switches, electrical outlets, and environmental controls
6. Reinforced bathroom walls to allow later installation of grab bars
7. Usable kitchens and bathrooms.

HUD recognizes ten “safe harbors” for compliance with the Fair Housing Act's design and construction requirements. For detailed information, see www.fairhousingfirst.org. Information about these safe harbors as well as HUD's policy for their use may be found in the “Report of HUD Review of the Fair Housing Accessibility Requirements in the 2006 International Building Code,” online at www.hud.gov/offices/fheo/disabilities/modelcodes/IBC-Notice.pdf.

For more HUD information about disability access, see:

- Fair Housing Accessibility First (a HUD-funded education program that helps home builders and architects design and construct housing that meets the FHA accessibility requirements), www.fairhousingfirst.org
- “Fair Housing Act Design Manual,” www.huduser.org/publications/destech/fairhousing.html
- “Accessibility Requirements for Buildings,” www.hud.gov/offices/fheo/disabilities/accessibilityR.cfm

90. What is “visitability?”

Most current building design for both housing complexes and single family homes is according to traditional specifications, without special attention given to access. Visitability is an affordable and inclusive design approach for integrating basic accessibility features into all newly built homes and housing. The idea is to build housing that has basic access for residents and their guests, including:

- One zero-step entrance on an accessible path of travel
- Doorways that are 32 inches clear throughout the floor plan
- Basic access to at least a half-bath on the main floor.

Visitability falls midway between “accessible housing” (housing that uses adaptive technology and design, such as ramps, lowered cabinets, and roll-in showers) and “universal design” (housing designed to ensure a basic level of accessibility in all housing). Visitability is a universal design goal that can be achieved today on a widespread basis.

While a few municipal ordinances enforce visitability for housing built with public funds, visitability is still mostly a voluntary standard that can be used in any type of housing. Visitability makes houses relatively easy to adapt in the future, so current residents can remain in their homes as they age. If included during design and planning, visitability features are extremely cost-efficient and provide advantages (and often added value) to non-disabled consumers as well.

For more information, see the following resources:

- Center for Inclusive Design & Environmental Access, www.ap.buffalo.edu/idea/indexwelcome.html
- Visitability Initiative, www.ap.buffalo.edu/rercud/projectDV4.htm
- Concrete Change, www.concretechange.org.

91. I represent a development company that’s constructing a two-building complex. Before we began work on the second building, a buyer notified us that he wants a roll-in shower and some other accessible features installed in his unit. What should we do?

At this point in the process, the request for a change in your plans should be considered a reasonable accommodation. The following guidance is provided in DOJ and HUD’s Reasonable Modifications Under the Fair Housing Act:

If the dwelling unit is not subject to the design and construction requirements (*i.e.*, a detached single family home or a multi-story townhouse without an elevator), then the purchaser is responsible for the additional costs associated with the structural changes. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

If the unit being purchased is subject to the design and construction requirements of the Fair Housing Act, then all costs associated with incorporating the features required by the Act are borne by the builder. If a purchaser with a disability needs different or additional features added to a unit under construction or about to be constructed beyond those already required by the Act, and it would cost the builder more to provide the requested features, the structural changes would be considered a reasonable modification and the additional costs would have to be borne by the purchaser. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

92. If the house next door is a group home for people with developmental disabilities, do I have to disclose that to potential buyers?

You do not have to disclose this information, and under fair housing laws, you should not do so.

When unsure about whether a particular situation might be discriminatory, it's helpful to substitute another "protected class" and see if that sounds inappropriate. For example, if an African American family owned the house next door, would you point that out to the potential buyer? No!



Chapter Eight

Both Sides of the Law – Protections & Liabilities

“Maybe I’m naive,” said one Seattle area real estate agent, “but I’ve just never experienced a situation that involved fair housing. No buyers or sellers have ever said anything racist or anti-anyone. I know in some parts of the country this is still an issue, but why all the fuss about something that doesn’t seem like much of a problem here?”

Prospective home buyers and real estate professionals are better informed than ever before about their fair housing rights and responsibilities. Because of this, we don’t hear as many blatant “You can’t live here” statements as we used to.

Unfortunately, discrimination is still a problem for people trying to purchase homes. It may be more subtle, but it’s there. In some areas, it is pervasive. This chapter will show you the protections and liabilities you may have under fair housing laws.

93. I just lost a sales commission when an owner refused to deal with my Mexican clients. What are my rights?

You qualify as someone who has been harmed in a real estate transaction based on your association with your Mexican clients. You can file a complaint with your local fair housing enforcement agency, and your clients can file their own complaint as well. If the house is still available, in some situations, enforcement agencies have the power to stop the owner from selling to anyone else until they are able to determine if a fair housing violation has occurred. The sooner you and your clients contact your local fair housing agency, the better.

94. I just filed a discrimination complaint. What happens now?

The fair housing agency sends written notice to the person or business named in the complaint as a respondent (the one alleged to have committed the discriminatory act). The respondent has a chance to respond in writing to the complaint.

Early in the process, the agency attempts to resolve the complaint using mediation techniques, if all parties are willing. If an agreed resolution does not occur, the agency completes its investigation. The investigation is designed to determine whether the fair housing laws have been violated. Investigators gather evidence such as witness

interviews, written documents, on-site visits, etc. After completing the investigation, the agency makes a determination whether the evidence indicates "reasonable cause" or "no cause" to believe discrimination occurred. The agency sends a written decision to you and to the respondent.

If there is a "no cause" finding, you may appeal the decision. If there is a "reasonable cause" finding, investigators work with you and the respondent(s) to develop a settlement agreement that includes appropriate remedies, such as payment of lost commissions, staff training, or other remedies. All parties sign the settlement agreement. If attempts at resolution fail, the case is referred to the agency's legal department. The case will go through either an administrative process or the court system that covers the investigating agency's jurisdiction.

You can help your case by gathering as much information as you can to give to the investigator. Write down the details of what happened to you, including dates, times, who was involved, as well as names of possible witnesses. Keep an ongoing log of events. Save any written materials that relate to your case. Do **not** try to obtain witness statements – leave that to the fair housing investigators.

It is illegal for a respondent to retaliate against you because you filed a discrimination complaint. If you think you have been retaliated against, tell the fair housing agency immediately. You can file a separate complaint concerning the retaliation, which will be investigated regardless of the findings or outcome of the original complaint.

95. I'm Native American and I work in a small town. I'd like to join my local real estate association, but I keep getting put off. What are my rights?

State and federal fair housing laws protect agents who are denied access to real estate related services based on their protected class. Contact your local fair housing agency (see Appendix G) and ask them review the specifics in your case. You may also want to contact the Washington Association of Realtors and ask them to help you to access services in your area.

96. Can violating fair housing laws affect my real estate license?

Yes. A fair housing violation can result in the suspension or revocation of your license under both fair housing laws and the Department of Licensing's Real Estate Disciplinary Guidelines.

97. Should I keep all buyers' offers on file? For how long? What other records should I keep?

It's a good idea to keep all housing-related records on file long enough to be able to respond to complaints or lawsuits. There are several different time periods within which an individual may file. The safest course of action is to consult your real estate attorney for information about records retention.

98. What is my general liability regarding fair housing?

If your actions are found to be in violation of the fair housing laws, you may be responsible for paying monetary remedies to the injured party for actual damages (including damages caused by emotional distress, humiliation and embarrassment), attorney fees, and civil penalties to the agency where the complaint was filed. You also may lose your license.

99. Is a real estate brokerage firm in violation of fair housing laws if one of its employees or agents unlawfully discriminates?

Yes. Ordinary vicarious liability rules apply in the area of fair housing – in other words, the firm (as an entity) is responsible for the actions of its agent. If a real estate firm is not incorporated or if the owners or principals also acted in a discriminatory manner, the owner(s) or principals can be personally liable.

100. A complaint was just filed against me alleging discrimination. What happens now?

Because state and local agencies have laws that are “substantially equivalent” to the Fair Housing Act, HUD contracts with state and local agencies to handle its investigations. Most housing complaints in this state are filed both with HUD and with the local fair housing agency that has jurisdiction over the property. If the case is filed with both, you will receive paperwork from HUD as well as from the local agency with jurisdiction. In circumstances where HUD does not offer coverage, a case will be filed with the state or local agency only.

All fair housing agencies follow a similar complaint processing procedure. You will be required to respond to the complaint within a certain number of days. Before starting a formal investigation, most agencies also offer a formal dispute resolution process to attempt a voluntary, mutually agreed upon conciliation of the allegations. HUD requires that agencies attempt conciliation within 30 days after a complaint has been filed, and throughout the investigation if early conciliation efforts fail.

The enforcement agencies investigate complaints as neutral fact-finders, evaluating documentation, interviewing relevant witnesses, conducting site visits, and making a final determination once all the evidence has been gathered. Both the charging party and respondent(s) have the opportunity to respond to the evidence.

If the investigation does not find sufficient evidence to support the allegations, a case is closed with a “no reasonable cause” finding. The charging party may request a reconsideration of a “no cause” finding. respondents have the opportunity to respond to the charging party’s request.

If the investigation finds sufficient evidence to support the allegations and efforts at resolution fail, a “reasonable cause” finding is issued and referred to the agency’s legal department. The case will go through either an administrative process or the court system that covers the investigating agency’s jurisdiction.